### COLORADO STATE BOARD OF MEDICAL EXAMINERS FULL BOARD OPEN MINUTES

November 15, 2007 9:05 a.m.

A full board meeting of the Colorado State Board of Medical Examiners was held Thursday, November 15, 2007, at the Denver Post Building, 1560 Broadway, Conference Room 1380, Denver, Colorado at 9:05 a.m. The meeting was noticed in accordance with Division policy.

Present were Dr. Allen-Davis, Dr. Bair, Dr. Faricy, Mr. Jennings (arrived 9:10), Dr. Jobin, Dr. Jolly (left at 12:28), Reverend Leivers, Dr. Matthews, Ms. Radcliff, and Dr. Watts.

The meeting was conducted by Dr. Faricy.

Also in attendance for all or part of the meeting were Board staff Cheryl Hara, Program Director, Susan Miller, Director of the Healthcare Section, Monica Brion, Acting Enforcement Program Manager, Danise Hayes, Program Assistant, Tracey Martinez, Physician Profile Administrator, and Claudia Brett Goldin, First Assistant Attorney General, and Sue Kim, Assistant Attorney General.

#### **MINUTES**

A motion was made, seconded, and carried to approve the open minutes of the August 16, 2007 meeting and the amended minutes of the November 16, 2006, meeting as drafted.

#### **REPORTS**

#### **President's Report:**

Nothing to report.

#### **Section Director's Report:**

Nothing to report.

#### **Program Director's Report:**

Ms. Hara introduced the new Physician Profile Administrator, Tracey Martinez, to the Board.

#### **Outreach Report:**

Dr. Allen-Davis reported that at the request of Patty Skolnik, she attended a town hall meeting.

#### **Appointments:**

Board members reviewed the application of Richard K. Keppe, M.D., for the Committee on Anticompetitive Conduct. A motion was made, seconded and carried to approve the application and to appoint Dr. Keppe.

The Board received a report that Bobbie J. Musgrave, Esq., was appointed by Governor Ritter to the Committee on Anticompetitive Conduct.

#### **GENERAL BUSINESS**

#### **PUBLIC RULEMAKING**

At 9:30 a.m. an announcement was made that rulemaking would start after conclusion of the General Business appearances.

A motion was made, seconded, and carried to convene the public rulemaking hearing, which was convened at 9:37 a.m. The Hearing was properly noticed under the provisions of the Administrative Procedure Act to consider Rules 800, 150, 155, 500, 410, 290 and 285.

Dr. Faricy presented an overview of the proposed rules. A full opportunity was provided for submission of oral or written comments by the public.

#### Rulemaking Hearing to Consider the Following Revision of Rules and Regulations:

Rule 800 - A Rulemaking Hearing to Consider Repeal and Readoption of Rules and Regulations for Rule 800 Colorado Board of Medical Examiners Rules Regarding the Delegation and Supervision of Medical Services to Unlicensed Health Care Providers Pursuant to § 12-36-106(3)(L), C.R.S.

Written comments were submitted as follows and were reviewed by the Board:

- a. Letter, undated, from Joanne Hill, R.N.
- b. Letter, undated, from Vicki Fitz, FNP-C
- c. Letters dated August 1, 2007 and October 24, 2007, from Kenneth Callison, Director, Allied Health Association
- d. E-mail dated August 14, 2007, from unknown author
- e. Letter dated September 5, 2007, from J. Van Valkenburg, Ph.D., RPA, RT, Executive Director, Certification Board for Radiology Practitioner Assistants (CBRPA)
- f. Letter dated September 17, 2007, from Eric Burd, RPA, NSRPA President
- g. E-mails dated October 3 and October 31, 2007, from Theresa Pacheco, M.D., Associate Professor, Department of Dermatology, University of Colorado Health Sciences Center
- h. Letter dated October 5, 2007, from Ranella Hirsch, M.D., Chair, Scope of Practice Work Group, American Society for Dermatologic Surgery
- i. Letter dated October 10, 2007, from Tony Jucek
- j. Letter dated October 11, 2007, from D. Knight, Secretary, CSRPA Board
- k. Letter dated October 13, 2007 and e-mail dated October 28, 2007, from Richard J. Ort, M.D., President, Colorado Dermatologic Society
- Letter dated October 23, 2007, from Darrel S. Rigel, M.D., President, American Society for Dermatologic Surgery
- m. E-mail dated October 24, 2007, from Paul Orton, M.D.
- n. Letter dated October 29, 2007, from John Bershof, M.D., FACS, Division Chief, Plastic Surgery, Rose Medical Center
- o. Letter dated October 30, 2007, from William D. Merkel, M.D., Plastic Surgery Specialists, PC
- p. Letter dated October 30, 2007, from Christine Jenni, R.N., BSN
- q. Letter dated October 30, 2007, From Diane R. Baker, M.D., FAAD, President of the American Academy of Dermatology Association.
- r. E-mail dated October 31, 2007, from Lawrence Barfield, D.O., & Sabrena Morton, Columbine Dermatology, P.C.
- s. Letter dated October 31, 2007, from Katherine Golden, R.N., Avanti Skin Center of Denver
- t. Letter dated November 1, 2007, from Frederick Y. Yu, Sherman & Howard, L.L.C.
- u. Letter dated November 2, 2007, from Mauricio Mejia, M.D., Medical Director, Avanti Skin Center of Denver
- v. Email dated November 6, 2007, from Leslie Capin, M.D.
- w. Email dated November 6, 2007, from Richard E. Stiefler, M.D.
- x. Letter dated November 13, 2007, from Brian R. Sperber, M.D., Ph.D., Colorado Springs Dermatology Clinic, P.C.
- y. Letter dated November 14, 2007, from Eric B. Olsen, M.D., Reflections MedSpa
- z. Letter dated November 15, 2007, from Lorenzo Kunze, Rocky Mountain Laser College
- aa. Memorandum dated November 15, 2007, from Mark Merrill, Program Director, State Board of Nursing
- bb. Letter, undated, from Jan Walters, President & CEO, Colorado School of Paramedical Esthetics

Open public testimony ensued. The following people requested to present oral testimony and did present oral testimony:

- Dariya Arman-Mann, BA, PMA, Paramedical, Aesthetics Medical Spas
- Matt Azer, Program Director for Office of Barbers & Cosmetology Licensing
- John Bershof, M.D., Body By Design, Rose Medical Center and Skyridge Medical Center
- Ken Callison, Allid Health
- Philippe A. Capraro, M.D., Facial Aesthetic, Inc., Rose Medical Center
- Joel Cohen, M.D., dermatologist
- DeNae D'Aura, self and aesthestics coalition
- Robert Goodman, A New Image
- John A. Grossman, M.D., Grossman Plastic Surgery, Rose Medical Center
- James Herman, RPA
- Carol Hiller, medi-spas, small businesses, etc.
- Laurenzo Kunze, Rocky Mountain Laser College
- Mark Merrill, Program Director, Board of Nursing
- Arlene Malay, Owner, College of International Esthetics
- Mauricio Mejia, M.D., Owner, Avanti Skin Center of Denver
- Shelly Novello, President, Ink-B-Gone
- Susan Strasburg, R.N., Body By Design
- Nick Slencovich, M.D., physician
- Lynda Young, Rock Creek Laser, signed but didn't testify
- Fred Y. Yu, Esq., Sherman & Howard, LLC

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- Leslie Capin, M.D.
- Jan Walters, President & CEO, Colorado School of Paramedical Esthetics

The public testimony session concluded at 11:27 a.m.

No formal action was taken.

A motion was made, seconded, and carried to (1) refer the rule to a committee of the Board to discuss possible revisions to Rule 800 in light of the public oral and written commentary, and (2) place the matter on the Board's agenda for its February 2008 Full Board meeting to discuss what action to take with regard to the rulemaking proceeding to repeal and readopt Rule 800.

The Board will continue to accept written comments. Oral testimony is closed.

#### **Adoption of Rules and Regulations**

## Rule 150 - Colorado State Board of Medical Examiners Rules and Regulations Regarding the Requirement that Licensed Physicians Timely Update Information Required by the Michael Skolnik Medical Transparency Act.

The Board reviewed a memorandum from Susan Miller, Healthcare Section Director, dated October 31, 2007, regarding implementation of the Transparency Act (Rule 150 and 155) and a memorandum from Susan Miller dated November 2, 2007, regarding HB07-1331, and a copy of HB07-1331, The Transparency Act.

Open public testimony ensued. The following people requested to present oral testimony and did present oral testimony: Lynn Parry, M.D.

Discussion among the Board members ensued.

After due consideration, a motion was made, seconded, and unanimously carried to adopt the rule as amended, together with statement of basis and purpose, as published with the Notice of Rulemaking Hearing. The rule as adopted is attached and incorporated herein by this reference.

## Rule 155 – Colorado State Board of Medical Examiners Rules and Regulations Regarding the Imposition of Administrative Fines Pursuant to the Michael Skolnik Medical Transparency Act.

The Board reviewed a memorandum from Susan Miller, Healthcare Section Director, dated October 31, 2007, regarding implementation of the Transparency Act (Rule 150 and 155) and a memorandum from Susan Miller dated November 2, 2007, regarding HB07-1331, and a copy of HB07-1331, The Transparency Act.

Oral public testimony ensued. The following people requested to present oral testimony and did present oral testimony: Patty Skolnik and Linda Siderius, Esq.

Discussion among the Board members ensued.

After due consideration, a motion was made, seconded, and unanimously carried to adopt the rule as amended, together with statement of basis and purpose, as published with the Notice of Rulemaking Hearing. The rule as adopted is attached and incorporated herein by this reference.

# Rule 285 - Colorado State Board of Medical Examiners Rules and Regulations Regarding Suspensions for Failure to Comply with Any Conditions Imposed on a License Pursuant to a Disciplinary Final Agency Order or a Disciplinary Stipulation and Final Agency Order.

Written comments were submitted as follows:

a. Memorandum dated October 25, 2007, from Claudia Brett Goldin, FAAG

No oral comments were received.

Discussion among the Board members ensued.

After due consideration, a motion was made, seconded, and unanimously carried to terminate rulemaking on Rule 285.

#### **Revision of Rules and Regulations**

### Rule 290 - Colorado State Board of Medical Examiners Rules and Regulations Misleading, Deceptive or False Advertising: Clarification of 12-36-117(1)(hh), C.R.S.

No oral or written comments were received. Discussion among the Board members ensued.

After due consideration, a motion was made, seconded, and unanimously carried to terminate rulemaking on Rule 290.

## Rule 410 – Colorado Board of Medical Examiners Rules and Regulations Regarding the Demonstration of Continued Competency by Physician Assistant Applicants for Licensure, Reinstatement, or Reactivation of a license.

No oral or written comments were received. Discussion among the Board members ensued.

After due consideration, a motion was made, seconded, and unanimously carried to terminate rulemaking on Rule 410.

## Rule 500 - Colorado State Board of Medical Examiners Rules Defining the Duties and Responsibilities of Emergency Medical Services Medical Directors and the Authorized Medical Acts of Emergency Medical Technicians.

Written comments were submitted as follows:

a. Memorandum dated August 31 and September 28, 2007, from Randy Kuykendall, EMS Section Chief.

Oral public testimony ensued. The following people requested to present oral testimony and did present oral testimony: Fred Severyn, M.D., Medical Director, Prehospital Care Program.

Discussion among the Board members ensued.

After due consideration, a motion was made, seconded, and unanimously carried to repeal and readopt the rule as amended, together with statement of basis and purpose, as published with the Notice of Rulemaking Hearing.

The rulemaking session concluded at 12:45 p.m.

#### **Proposed Policy 40-20**

After due consideration, a motion was made, seconded and carried to adopt Policy 40-20 as amended regarding Implementation of the Michael Skolnik Medical Transparency Act.

#### **Proposed Policy 40-21**

After due consideration, a motion was made, seconded and carried to adopt Policy 40-21 as amended regarding Definition of Terms To Clarify Reporting Requirements under the Michael Skolnik Medical Transparency Act.

#### **Rule 500 Waiver Requests**

Fred Severyn, M.D., Medical Director, Prehospital Care Program, was present at the meeting to discuss waiver requests. The Board reviewed an October 22, 2007, memorandum from Dr. Severyn outlining the waiver requests and the Medical Advisory Group (MAG) recommendations, along with the waiver applications.

Dr. Jobin recused himself from participation in the vote regarding his request for a waiver of Rule 500.

A motion was made, seconded and carried to approve recommendations by MAG regarding waiver requests with a request to begin keeping statistics and to limit the waiver to two years. A motion was made, seconded and carried to approve waiver requests #1, #3, and #4, and #5, to table request #2 for a future meeting.

### Request for Waivers of the Board Rule 400 regarding Licensure and Practice by Physician Assistants

#### Richard Velasquez, M.D., Valley Wide Health Systems

The Board reviewed correspondence and a request for extension of waiver granted November 16, 2006, from Dr. Velasquez.

A motion was made, seconded, and carried to approve the extension for one year.

### <u>American College of Phlebology, Marlin Schul, M.D., Chair ACP Specialty Recognition</u> <u>Committee</u>

The Board reviewed a letter from Dr. Schul dated July 13, 2007, regarding recognition of Phlebology as a specialty listing.

A motion was made, seconded and carried to direct staff to send letter to Dr. Schul notifying him that the Colorado Board of Medical Examiners does not identify physicians by specialty at this time.

#### **CPHP REPORTS**

The Board reviewed the September 30, 2007 First Quarter Report.

A motion was made, seconded, and carried to accept the report.

#### **ATTORNEY GENERAL REPORTS**

#### **Case Status of Full Board Cases:**

#### a. Crow v. Penrose-St Francis Healthcare System

The Board reviewed a confidential October 29, 2007 memorandum from Claudia Brett Goldin, First Assistant Attorney General, and Sue Kim, Assistant Attorney General, regarding this case.

No formal action was required.

#### b. Augustine Rios, M.D., (Unlicensed Practice) Case #2007-003358-F

The Board reviewed a confidential November 5, 2007 memorandum from Claudia Brett Goldin, First Assistant Attorney General.

A motion was made, seconded and carried to refer this case to the Office of the Attorney General to obtain a cease and desist order.

#### **REPORTS OF INVESTIGATION**

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#### Art Brown, Unlicensed, Case #2007-002924-F

The Board reviewed a Report of Investigation dated August 30, 2007, from Martha Mesch, Investigator.

A motion was made, seconded and carried to dismiss this case for no reasonable cause to warrant further action with reference thereto.

#### Daniel Dolan, Unlicensed, Case #2007-002458-F

The Board reviewed a Report of Investigation dated August 30, 2007, from David Sexton, Investigator.

A motion was made, seconded and carried to dismiss this case for no reasonable cause to warrant further action with reference thereto, and to send a letter of warning that he is not authorized to use class II devices to remove tattoos or for any other purpose.

#### Robert Milisen, Unlicensed, Case #2007-002459-F

The Board reviewed a Report of Investigation dated August 29, 2007, from D'Ann Murphy, Investigator.

A motion was made, seconded and carried to refer this case for a second time to the Office of Investigations to obtain additional information.

#### Glen Petcavage, Unlicensed, Case #2006-004556-F

The Board reviewed a Report of Investigation dated October 30, 2007, from Glenn Frank, Investigator.

A motion was made, seconded and carried to direct staff to send a letter regarding the Board's concerns involving unlicensed practice of medicine by a non-physician who dictates the terms of practice.

#### **LETTERS OF INTEREST**

The Board reviewed the article below:

<u>Article dated September 5, 2007, from The Journal of the American Medical Association,</u> regarding physician scores on a national clinical skills examination as predictors of complaints to medical regulatory authorities.

#### **ADJOURNMENT**

There being no further business, the meeting was adjourned at 3:23 p.m.

#### FOR THE BOARD OF MEDICAL EXAMINERS

Approved by: Patrick O. Faricy, M.D. Date: February 21, 2008